

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY GEORGE ARRIGO,)	Case No. CV 15-984 R(JC)
Petitioner,)	
v.)	MEMORANDUM OPINION AND
JACK FOX, Warden,)	ORDER DISMISSING PETITION FOR
Respondent.)	WRIT OF HABEAS CORPUS

I. SUMMARY

On February 11, 2015, petitioner Anthony George Arrigo (“petitioner”), a federal inmate proceeding *pro se* who is in the custody of the Federal Bureau of Prisons (“BOP”) at the Federal Correctional Institution in Lompoc, California, filed a “Petition for Relief from Administrative Sanctions Due to Violation of Plaintiff[’]s Right to Due Process Pursuant to 28 U.S.C. § 2241,” which is effectively a Petition Writ of Habeas Corpus (“Petition”). Petitioner claims he was deprived of due process in connection with a prison disciplinary proceeding in which he was found guilty of possessing a weapon in his cell on September 28, 2012, and was consequently subjected to disciplinary sanctions including a loss of forty (40) days of good conduct time credit. More specifically, petitioner claims the evidence was insufficient to find him guilty of the charge.

1 On March 16, 2015, respondent filed an Answer with a declaration of BOP
2 representative Christopher N. Cruz (“Cruz Decl.”), and accompanying exhibits
3 (“Cruz Ex.”). The Answer and supporting evidence reflect that since the filing of
4 the Petition, the BOP has essentially modified and reduced the above-referenced
5 finding to one of guilt for possessing an unauthorized item (as opposed to a
6 weapon) and has restored the forty (40) days of good time credit. In light of the
7 foregoing, respondent argues that the Petition is no longer cognizable, is moot, and
8 should be dismissed. Alternatively, respondent argues that the Petition should be
9 denied because it is without merit.

10 Petitioner did not file a Reply and the deadline to do so has now expired.

11 For the reasons stated below, the Petition should be dismissed.

12 **II. BACKGROUND**

13 Petitioner is serving a fifty-one (51) month term of imprisonment as the
14 result of a federal conviction in the District of Oregon. (Cruz Decl. ¶ 4a; Cruz Ex.
15 A). As of March 9, 2015, petitioner’s current projected release date, assuming that
16 he earned all remaining available good time credit was April 24, 2016. (Cruz Decl.
17 ¶ 4c; Cruz Ex. A).¹

18 On September 28, 2014, a Correctional Officer at the Federal Correctional
19 Institution in Fort Worth, Texas searched the cell in which petitioner and four other
20 inmates were housed. (Petition at 3; Cruz Decl. ¶ 7c; Cruz Ex. C). During the
21 search, the officer found a razor blade attached by a magnet to the outside of the
22 rear of petitioner’s locker. (Cruz Decl. ¶ 7c; Cruz Ex. C). As a result, all four
23 inmates were charged with possession of a weapon. (Cruz Ex. C).

24 On October 4, 2014, the above-referenced Correctional Officer wrote an
25 incident report charging petitioner with possession of a weapon. (Cruz Decl. ¶ 7a;

26
27 ¹The Court notes that the publicly available BOP inmate locator website reflects that the
28 current projected release date for petitioner – Register Number 71663-065 – is even earlier, *i.e.*,
March 20, 2015. See <http://www.bop.gov/inmateloc/> (last visited September 17, 2015).

1 Cruz Ex. C). The report was delivered to petitioner that same day. (Cruz Decl.
2 ¶ 7a; Cruz Ex. C). Petitioner was then afforded the opportunity to make a
3 statement, call witnesses, present documentary evidence and obtain the assistance
4 of a staff representative. (Cruz Decl. ¶ 7b; Cruz Ex. C).

5 The Disciplinary Hearing Officer (DHO) held a disciplinary hearing on
6 October 24, 2012. (Cruz Decl. ¶ 7c; Cruz Ex. C). The DHO considered the
7 reporting Correctional Officer's written statement in the incident report,
8 petitioner's statements to the investigator, the Unit Disciplinary Committee and the
9 DHO, and the pictures of the razor blade found in the locker. (Cruz Decl. ¶ 7c;
10 Cruz Ex. C). Based on the foregoing evidence, the DHO concluded that petitioner
11 was guilty of possession of a weapon. (Cruz Decl. ¶ 7d). As a result, the DHO
12 sanctioned petitioner with the loss of forty (40) days of good conduct time credit,
13 thirty (30) days of disciplinary segregation and the loss of certain electronic
14 messaging for one year. (Cruz Decl. ¶ 7d). The DHO completed the written report
15 on November 1, 2012, and it was delivered to petitioner on December 3, 2012.
16 (Cruz Decl. ¶ 7d).

17 On February 26, 2015, the Disciplinary Hearing Administrator (DHA) for
18 BOP's Western Region reviewed the disciplinary determination made in this
19 matter at the request of BOP counsel. (Cruz Decl. ¶¶ 6, 7; Cruz Ex. B). As a result
20 of such review, the charge against petitioner was reduced from possession of a
21 weapon to possession of an unauthorized item. (Cruz Decl. ¶¶ 5, 8; Cruz Ex. B).
22 The DHA also restored all of the good conduct time credit that had originally been
23 lost as a result of the DHO's findings. (Cruz Decl. ¶¶ 5, 8; Cruz Ex. B). The other
24 disciplinary sanctions imposed (*i.e.*, the terms of administrative segregation and
25 loss of certain electronic messaging) have already been served. (Cruz Decl. ¶ 5;
26 Cruz Ex. B).

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1 **III. DISCUSSION**

2 **A. Petitioner's Claim Is Moot and No Longer Cognizable**

3 As noted above, petitioner seeks restoration of the good conduct time credit
4 originally disallowed as a result of the above-referenced disciplinary proceedings
5 as well as other related relief from sanctions imposed as a result of the disciplinary
6 findings. (Petition at 7). To the extent petitioner seeks the restoration of good
7 conduct time credit, the Petition is moot. To the extent petitioner seeks other
8 relief, the Petition is not cognizable.

9 **1. Petitioner's Claim Is Moot to the Extent It Seeks**

10 **Restoration of Good Conduct Time Credit**

11 A federal court's jurisdiction is limited to actual, ongoing cases or
12 controversies. U.S. Const. art. III, § 2; see also Lewis v. Continental Bank Corp.,
13 494 U.S. 472, 477-78 (1990) (discussing same). "[F]ederal courts may not 'give
14 opinions upon moot questions or abstract propositions.'" Calderon v. Moore, 518
15 U.S. 149, 150 (1996) (per curiam) (quoting Mills v. Green, 159 U.S. 651, 653
16 (1895)); see also Church of Scientology of California v. United States, 506 U.S. 9,
17 12 (1992) (same). "If an event occurs that prevents the court from granting
18 effective relief, the claim is moot and must be dismissed." American Rivers v.
19 National Marine Fisheries Service, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation
20 omitted); see also Church of Scientology of California, 506 U.S. at 12 (noting that
21 a case becomes moot when it is "impossible for the court to grant 'any effectual
22 relief whatever' to a prevailing party," quoting Mills, 159 U.S. at 653). When an
23 agency has performed the action sought by a plaintiff in litigation, a federal court
24 "lacks the ability to grant effective relief, and the claim is moot." Rosemere
25 Neighborhood Ass'n v. U.S. Environmental Protection Agency, 581 F.3d 1169,
26 1173 (9th Cir. 2009) (citation and internal quotation marks omitted); see also
27 Arthur v. Milunic, 2013 WL 1890335, *1 (C.D. Cal. Mar. 22, 2013) (habeas
28 petition moot where petitioner obtained the custody credit he sought from the

1 BOP), report and recommendation adopted, 2013 WL 1898821 (C.D. Cal.
 2 May 3, 2013). Here, as noted above, the BOP has already restored the good
 3 conduct time credit which was originally disallowed based upon the finding that
 4 petitioner possessed a weapon. Accordingly, to the extent the Petition seeks
 5 restoration of such credit, it is moot and must be dismissed.

6 **2. The Petition Is Otherwise Not Cognizable**

7 The Ninth Circuit recently clarified that a claim challenging prison
 8 disciplinary proceedings is cognizable in habeas only if it will “*necessarily* spell
 9 speedier release” from custody, meaning that the relief sought will either terminate
 10 custody, accelerate the future date of release from custody, or reduce the level of
 11 custody.” Nettles v. Grounds, 788 F.3d 992, 995 (9th Cir. 2015) (quoting Skinner
 12 v. Switzer, 562 U.S. 521 n. 13 (2011) (emphasis added by Nettles) (internal
 13 quotation marks omitted by Nettles) (citing Wilkinson v. Dotson, 544 U.S. 74, 86
 14 (2005) (Scalia, J., concurring)). Here, in light of the BOP’s restoration of the forty
 15 (40) days of good conduct time credit and the absence of any other relief sought
 16 which would necessarily spell speedier release from custody, petitioner’s claim is
 17 no longer cognizable on habeas review and must be dismissed.

18 **B. The Petition Is Without Merit**

19 Even assuming the Petition was not subject to dismissal on the foregoing
 20 bases, the Court would deny the Petition on its merits. Petitioner asserts that he
 21 was deprived of due process in the disciplinary proceedings because there was
 22 insufficient evidence to support the finding of guilt. The Court disagrees.

23 Due process in a prison disciplinary hearing requires that there be “some
 24 evidence” to support the findings made. Superintendent, Massachusetts
 25 Correctional Institution, Walpole v. Hill (“Hill”), 472 U.S. 445, 457 (1985).
 26 Under the “some evidence” standard, the Court does not examine the entire record,
 27 make an independent assessment of the credibility of witnesses, or weigh the
 28 evidence. Bruce v. Ylst, 351 F.3d 1283, 1287 (9th Cir. 2003); see Castro v.

1 Terhune, 712 F.3d 1304, 1314 (9th Cir. 2013) (courts do not “examine the entire
2 record, independently assess witness credibility, or reweigh the evidence”)
3 (citation and internal quotations omitted). Rather, “the relevant question is
4 whether there is any evidence in the record that could support the conclusion.”
5 Hill, 472 U.S. at 455-56. Direct evidence is not required, and evidence that is
6 “meager” or indirect may suffice. Id. at 456–57. Moreover, evidence must bear
7 only “some indicia of reliability” to be considered “some evidence.” Castro, 712
8 F.3d at 1314-15 (citation and internal quotations omitted).

9 Here, the evidence, although not overwhelming, was sufficient to withstand
10 the “some evidence” test and to establish that petitioner at least constructively
11 possessed the razor blade attached to his locker.

12 **IV. ORDER**

13 IT IS THEREFORE ORDERED that the Petition is dismissed. The Clerk
14 shall enter judgment accordingly.

15 IT IS SO ORDERED.

16 DATED: September 18, 2015



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19 HONORABLE MANUEL L. REAL
20 UNITED STATES DISTRICT JUDGE
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